

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

**JOHNNIE CONNER, HENRY CLAY AND
ARNITA CLAY**

PLAINTIFFS

VERSUS

CIVIL ACTION NO. 4:05CV23-P-B

**FIRST FAMILY FINANCIAL SERVICES, INC.
ET AL**

DEFENDANTS

ORDER

This cause is before the Court on the defendants' Motion to Dismiss [22]. The Court, having reviewed the motion and being otherwise fully advised in the premises, finds as follows, to-wit:

On June 22, 2005, the defendants filed a Motion to Compel [16]. On July 15, 2005, Magistrate Judge Eugene M. Bogen entered an Order granting part of the relief sought by defendants and ordering the plaintiffs to provide defendants with appropriate discovery responses on or before July 22, 2005. As of August 8, 2005, the plaintiffs had failed to do so.

Defendants filed a Motion to Dismiss based on the provisions of Federal Rule of Civil Procedure 37(b)(2)(A) - (E). Defendants ask that the plaintiffs' Motion to remand be denied and the case be dismissed with prejudice. F.R.C.P. 37(b)(2)(B) and (C). In addition to dismissal, defendants request reimbursement of all attorneys fees, costs and expenses associated with defending the suit from its inception. F.R.C.P. 37(b)(2)(E).

As of September 7, 2005, plaintiffs have not filed any response to the instant motion. Accordingly, the Court finds that the defendant's motion is well-taken and should be granted with regard to defendants' request for dismissal. However, inasmuch as the sanction imposed is a

dismissal with prejudice, the Court finds that it would be unduly harsh to impose any additional sanction. Accordingly, the defendants' request for reimbursement of all attorneys fees, costs and expenses is not well-taken and should be denied.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the defendant's Motion to Dismiss [22-1] is should be GRANTED IN PART and DENIED IN PART. IT IS FURTHER ORDERED that the plaintiffs' Motion to Remand [4] is hereby DENIED. IT IS FURTHER ORDERED that the defendants' request for reimbursement of all attorneys fees, costs and expenses is not well-taken and should be, and hereby is, DENIED. IT IS FURTHER ORDERED that this action be, and hereby is, DISMISSED WITH PREJUDICE for failure to comply with this Court's Order dated July 15, 2005.

SO ORDERED, this the 7th day of September, 2005.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE